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No. 89-1817

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

COUNTY OF RIVERSIDE, AND COIS BYRD, SHERIFF OF RIVERSIDE COUNTY,
Petitioners,

vs.

DONALD LEE McLAUGHLIN, et al.,
Respondents.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF OF *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS FILED ON BEHALF OF THE AMERICAN CIVIL LIBERTIES UNION

AMERICAN CIVIL LIBERTIES UNION FOUNDATION

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INTEREST OF AMICUS CURIAE

The American Civil Liberties Union ("ACLU") is a nationwide, nonpartisan organization of over 250,000 members dedicated to advancing fundamental constitutional rights. The ACLU has had a long interest in defending the constitutional rights of persons in detention and has been involved in numerous cases involving these issues in the state and federal courts. The ACLU of Southern California, an affiliate of the ACLU, filed an amicus curiae brief in the Court of Appeals in support of Respondents.

In accordance with Supreme Court Rule 37.3 this amicus curiae brief is filed with the consent of the parties. Copies of the parties' letters of consent were

filed with this Court on December 19, 1990, in accordance with Rule 36.2.

STATEMENT OF THE CASE

When a person is arrested without a warrant, that person has a constitutional right to a prompt determination of probable cause. Gerstein v. Pugh, 420 U.S. 103 (1975). The Respondents, Donald Lee McLaughlin, Johnny E. Jones, Diane Simone, and Scott Hyde represent a class of people who have been arrested without a warrant and are held in jail without a prompt determination of probable cause. Among this class are people released as soon as probable cause hearings are held because of insufficient grounds for arrest. Some of these people should never have been arrested at all. Others in the class would be detained, after a probable

cause determination, pending further legal proceedings.

As alleged in the complaint, the four named plaintiffs were all arrested without a warrant and incarcerated in the Riverside County jail. Of central importance to the justiciability issue is that three of the four named plaintiffs -- Johnny E. Jones, Diana Ray Simon, and Michael Scott Hyde -- were all in jail at the time they filed the Second Amended Complaint.[1] They alleged that they had been arrested without warrants, were in jail in Riverside County, and had neither received prompt probable cause hearings

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[1] The fourth named plaintiff, Donald Lee McLaughlin, had apparently been released by the time the named plaintiffs filed the Second Amended Complaint; he was not arraigned during the five days he spent in jail, nor had he seen a judge during that time. Joint Appendix ("J.A.") 3.

nor arraignments (a formal pretrial procedure under California law, see Cal. Penal Code §825). These plaintiffs also alleged that, by virtue of the policy and practice of Petitioner County of Riverside and the other petitioners (collectively "the County"), they were being deprived of their right to have a neutral third party afford a prompt review of the probable cause for their arrest. The named plaintiffs sought to represent a class of "all present and future prisoners in Riverside County Jail . . . arrested without a warrant . . . [and] denied prompt probable cause, bail, or arraignment hearings." J.A. 7.

After orally certifying a class on November 14, 1988, the district court held that the County had failed, as a matter of policy, to provide those arrested without

warrants with a prompt probable cause determination, as required by the Court in Gerstein v. Pugh, 420 U.S. 103 (1975). The district court found that for those arrested without a warrant, as many as five days' delay occurred between the arrest and a determination of probable cause by a neutral third party. Further, information in the record indicated that, for individuals who were charged with felonies rather than misdemeanors, probable cause hearings could be coupled with preliminary hearings and thus might not occur until ten court days after arraignment. J.A. 299. The district court determined that the County could proceed administratively within twenty-four hours without undue difficulties, and therefore issued an injunction requiring that the County, absent "exigent

circumstances," expedite probable cause determinations so as to bring them within the requirements of Gerstein. The trial judge adopted thirty-six hours after arrest as the time in which, absent exigent circumstances, the County must afford a probable cause hearing.

The Ninth Circuit affirmed. The Court of Appeals found undisputed both that Jones, Simon, and Hyde were, when they filed the Second Amended Complaint, in custody without warrants and without a probable cause determination; and that the County did not claim that it needed additional time, but could process those individuals as the district court had determined. 888 F.2d 1276, 1278 (9th Cir. 1989). Relying upon the limited scope of the injunction -- which applied only to inmates at the urban center Riverside

County Jail and which was issued without fixed time limits for implementation -- the appellate court upheld the district court's conclusions on both the justiciability of the lawsuit and the propriety of the remedy ordered.

SUMMARY OF ARGUMENT

In arguing that Jones, Simon, and Hyde had no right to seek injunctive relief, the County asks this Court to craft a novel and radical new doctrine of standing. To substantiate its view, the Country relies on a portion of the Complaint -- in which the plaintiffs state that they "did not receive" a prompt probable cause hearing [J.A. 3] -- and argues that plaintiffs' injury had ended before the complaint was filed. The County attempts to cast the alleged injury as having already occurred because the

time for having a "prompt" hearing had (in the County's view) come and gone. What the County ignores are the next three words of the complaint, in which the named plaintiffs allege that they "have not received a probable cause" hearing [J.A. 3 (emphasis added)] and that their injury -- detention without a warrant and without a probable cause hearing -- was ongoing and continuing into the future.

This Court has never held that a person who is suffering ongoing injury cannot obtain injunctive relief simply because that person has already suffered some injury. Rather, the standing issue here falls well within the familiar jurisprudence of this Court: these plaintiffs were arrested without a warrant; were in jail and held without a probable cause hearing; and filed a

complaint seeking an injunction to obtain a remedy that would have redressed the injury caused by the County's policy and practice of holding them without a prompt probable cause determinaton.

As the courts below decided on the basis of this Court's precedents, at the moment that Jones, Simon and Hyde filed their complaint, they alleged (and it has never been disputed) that they were suffering a direct and current injury as a result of the County's unconstitutional conduct, and that an injunction would redress that injury. This is sufficient to confer standing. Of course, the injury that Jones, Simon, and Hyde were suffering was one on which a court would be unlikely to rule before it abated; class certification meant that, at the time the court could reach the merits, individuals

with "live" controversies would be before the court. Because Jones, Simon, and Hyde had met the standing requirements at the moment that they filed the Second Amended Complaint, the controversy remained "live" as a result of the later class certification. Thus, like Sosna v. Iowa, 419 U.S. 393 (1975), and United States Parole Commission v. Geraghty, 445 U.S. 388 (1980), this case would more properly be characterized, not as one implicating issues of standing, but as one which could have become moot, but which did not.[2]

The second issue in this case -- whether the district court properly issued

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[2] The County has not couched its justiciability argument as one of mootness and has not asked this Court to overturn Geragty and Sosna, but rather has argued that this Court ought to so extend Lyons as to preclude a host of injunctive relief cases. See, e.g., Nebraska Press Association v. Stewart, 427 U.S. 539 (1976).

the injunction -- makes affirmance appropriate or requires dismissal of the writ as improvidently granted, because of record ambiguities. The district court concluded that Riverside County had failed to provide all individuals, arrested without warrants, with prompt probable cause hearings. The record supported these conclusions: it is undisputed that the County kept some individuals in custody without a probable cause determination for as much as five days. Procedures apparently varied for those arrested on misdemeanors and on felonies. In misdemeanor cases, individuals were supposed to be informed at the arraignment that they had a "right to a hearing" on probable cause, "if . . . request[ed]." J.A. 123. In felony cases -- according to the Riverside District Attorney --

individuals can be arrested without a warrant and kept in custody until a "preliminary hearing," another formal pretrial procedure in California,[3] at which point the probable cause determination occurs. J.A. 298-299.

The County neither argues that it cannot comply with the district court's injunction[4] nor focuses this Court's attention on the facts of this case. Rather, the County asks this Court to

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[3] The two key California procedures are the arraignment, which occurs from between two and five days after arrest (Cal. Penal Code §825), and the preliminary hearing, which occurs up to ten days after arraignment (Cal. Penal Code §859b). Thus, the preliminary hearing may not occur until over two weeks after arrest.

[4] Indeed, the County's District Attorney stated that it could comply with the time frame within which its neighbor, Orange County, operates -- the exact same time frame imposed by the district cout injunction at issue herein.

speculate about whether, as a general proposition, counties in California can combine Gerstein probable cause hearings with other preliminary criminal proceedings. Amicus respectfully contends that, while that question may be of academic interest, it is not presented by the facts of this case.

The record does substantiate the propriety of the injunctive relief granted, but this record does not establish the time frame within which the County provides probable cause hearings to individuals arrested on felony charges. The video shown to felony arrestees states that: "you have a right to have a hearing . . . within a reasonable time, at your request." J.A. 129. The Riverside District Attorney states that for felony arrestees the probable cause determination

occurs "within ten days after the arraignment" (emphasis added), and further notes that the California Penal Code sets out the "guidelines with regards to felons and probable cause hearings which we refer to as the preliminary hearing process." J.A. 298-299. Inferentially, Riverside County holds felony arrestees for an extended period of time and couples Gerstein hearings with preliminary hearings -- not arraignments. In contrast, in the brief submitted to this Court, the County maintains that it provides Gerstein hearings for felony arrestees "at the arraignment," (BP 41, n. 12) and that it has "steadfastly agreed to provide such hearings at . . . arraignment and not at preliminary hearing." Id.

In short, on this record, one cannot tell when the County actually gives

probable cause hearings to felony arrestees. This case is not the occasion upon which the Court should determine whether Gerstein hearings can be linked to other state procedures and under what circumstances. It may thus be appropriate for this Court to dismiss the writ as improvidently granted.[5] In the alternative, on the record as it now stands, the Court could appropriately affirm on justiciability and on the merits under Federal Rule of Civil Procedure 52.

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[5] See Kimbrough v. United States, 364 U.S. 661 (1961).

I.

RESPONDENTS PRESENTED A JUSTICIABLE CLAIM TO THE DISTRICT COURT: AT THE FILING OF THE COMPLAINT, THEY WERE INCARCERATED AND HAD NOT RECEIVED A PROBABLE CAUSE HEARING; THEY THEREFORE HAVE STANDING TO SEEK INJUNCTIVE RELIEF

To establish standing, a named plaintiff must show injury-in-fact, causation, Simon v. Eastern Ky. Welfare Rights Organization, 426 U.S. 26 (1976), and redressability of the injury through the requested relief. Larson v. Valente, 456 U.S. 228, 239 (1982). "[B]oth the trial and reviewing courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party." Warth v. Seldin, 422 U.S. 490, 501 (1975); Jenkins v. McKeithen, 395 U.S. 411, 421-22 (1969).

Further, as the County agrees, so long as the named plaintiff in a class action has standing at the time the complaint is filed, a live controversy exists -- the case is not moot -- even if the named plaintiff later loses his or her stake in the controversy, so long as the unnamed class members continue to have a live controversy. United States Parole Commission v. Geraghty, 445 U.S. 388, 403 (1980), citing Gerstein v. Pugh 420 U.S. at 110, n.11; Swisher v. Brady, 438 U.S. 204, 213, n. 11 (1978); Sosna v. Iowa, 419 U.S. 393 (1975). The class certification will relate back to the filing of the complaint. Swisher v. Brady, 438 U.S. at 213, n. 11 (1978); Sosna v. Iowa, 419 U.S. at 402 n. 11.

Under these precedents, Jones, Simon, and Hyde had standing when they filed the

Second Amended Complaint. The pleading alleged that they were arrested without a warrant and incarcerated at the time of filing and that they had not received a prompt probable cause determination. In addition, according to the allegations of the Second Amended Complaint, J.A. 3, Jones, Simon, and Hyde had not been arraigned. Under County policy and practice, they faced the continued threat of ongoing constitutional deprivation until they had their hearing. This ongoing and threatened injury was caused directly by the challenged conduct of the County.

The complaint also satisfies the redressability requirement. Contrary to the County's assertion, an injunction might have afforded Jones, Simon, and Hyde complete relief -- a prompt probable cause

determination. The Second Amended Complaint does not detail how long these individuals were in custody at the time they filed the pleading. It says only that they "did not receive and have not received prompt" hearings, not that it is too late to have one. Had the district court issued its injunction immediately, that injunction itself could have completely redressed the alleged injury to these three individuals.

Jones, Simon, and Hyde satisfy the redressability requirement for another reason. Even if they had been in jail for some amount of time, an injunction still would have given them "substantial and meaningful relief," see Larsen v. Valente, 456 U.S. at 243, by accelerating the probable cause determination. The Second Amended Complaint alleges that, when

Jones, Simon, and Hyde filed the pleading, they had not yet had bail hearing and had not been arraigned. J.A. 5. If they had been arrested on felony charges, and if they were not going to receive a probable cause determination until the preliminary hearing (as the Riverside District Attorney indicates was the County's practice), then an injunction could have ordered the County to provide a probable cause determination much sooner than the County's policies and practices would permit. Jones, Simon and Hyde could have received a direct and significant benefit from injunctive relief.[6]

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[6] The conclusion that Respondents had standing to seek injunctive relief finds support in this Court's opinion in Gerstein itself. In Gerstein, this Court reached the merits of the plaintiffs' claim, even though the plaintiffs in that case could never have received a "prompt" probable cause determination. As this (continued...)

Because Jones, Simon and Hyde

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[6](...continued)
Court explained, because it was "by no means certain that any given individual, named as plaintiff, would be in pretrial custody long enough for the district court to certify a class," the Court permitted an exception to the mootness doctrine. 420 U.S. at 110 n. 11. By discussing mootness and reaching the merits in Gerstein, this Court must have assumed that -- because at the time plaintiffs filed the complaint they were incarcerated without having had the constitutionally mandated determination -- the named plaintiffs in the class action had standing.

The County tries to explain Gerstein by asserting that the Court in that case simply "assumed" that the named plaintiffs had standing at the time of the complaint and by arguing that, in any case, Gerstein was decided eight years before City of Los Angeles v. Lyons, 461 U.S. 95 (1983). BP 27, n. 8. Gerstein was decided in 1975, the same year as Warth v. Seldin, 422 U.S. 490, and Ellis v. Dyson, 421 U.S. 426; a year after O'Shea v. Littleton, 414 U.S. 488; and a year before Simon v. Eastern Ky. Welfare Rights Org., 426 U.S. 26 -- all opinions that the County cites in support of its position. Because standing is a jurisdictional requirement, lack of standing can be raised on the Court's own motion. Regents of University of Calif. v. Bakke, 438 U.S. 265, 281 n. 14 (1978).

continued to suffer actual and threatened redressable injury when the complaint was filed, the County's reliance on City of Los Angeles v. Lyons is misplaced. In Lyons, the plaintiff brought an action seeking to enjoin the Los Angeles Police Department's use of chokeholds in cases not involving the threat of death or serious bodily injury. In holding that the plaintiff had no standing to seek injunctive relief, this Court noted that Lyons had failed to show that he would again have another encounter with the police; that the police always choke any citizen with whom they have an encounter; and that the City ordered or authorized the police to act in such a manner. 461 U.S. at 105-06. Because Lyons could not make these showings, any threat of future

harm -- being subjected to another illegal chokehold -- was speculative. Id.

What distinguishes Lyons from this case, however, is that in Lyons, the wrongful conduct directed toward the plaintiff had ceased long before he filed his lawsuit. As the Court recognized, during those few seconds, "Lyons had a live controversy with the City" -- i.e., standing to seek an injunction. Id. at 109. However, that controversy ended when the police officer released Lyons from his grip, and damages, not injunctive relief, provided the only remedy available to Lyons. By contrast, in this case the wrongful conduct -- the illegally prolonged incarceration without a probable cause determination -- and therefore the live controversy, had not ended at the time the Jones, Simon, and Hyde filed

their Second Amended Complaint. Instead, at that time, these plaintiffs were in jail after a warrantless arrest and were deprived of their right to a determination of probable cause -- the County maintaining its stranglehold on their constitutional rights.[7] Lyons is no bar to this case proceeding on the merits.[8]

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[7] For similar reasons, the other cases on which the County relies are distinguishable. E.g. Golden v. Zwickler, 394 U.S. 103 (1969) (allegedly illegal prosecution had terminated before complaint was filed); O'Shea v. Littleton, 414 U.S. 488 (1974) (at time complaint was filed, plaintiffs were neither subject to existing wrongs nor that they would be threatened with future arrest); Ellis v. Dyson, 421 U.S. 426 (1975) (unclear whether criminal proceedings had concluded when complaint filed, and uncertain whether plaintiff would be subject to prosecution again).

[8] For these reasons, the County's detailed argument about the possibility that Jones, Simon, and Hyde will be arrested in the future is entirely beside the point: the named plaintiffs were suffering existing, redressable injury (continued...)

Nevertheless, the County, relying on Lyons, seems to argue that Jones, Simon, and Hyde were, when they filed the Second Amended Complaint, no longer suffering redressable injury. According to the County, because these named plaintiffs alleged that they had already been denied a prompt Gerstein hearing, their injury had "passed," and an injunction could not redress that injury because the time for a prompt hearing had come and gone. BP 16-17. This analysis ignores the evidence in the record and makes no sense. As discussed above, the Second Amended Complaint alleges that Jones, Simon, and Hyde were arrested without warrants and had not had probable cause hearings, bail hearings, or arraignments. J.A. 5. The

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[8](...continued) when they filed the Second Amended Complaint.

pleading nowhere sets forth the amount of time that the plaintiffs had been in jail at the time they filed the Second Amended Complaint. So nothing in the record supports the County's bald assertion that the time for a prompt Gerstein hearing had passed by the time the Second Amended Complaint was filed.

In addition, the County's argument ignores the ongoing harm of continued incarceration without a determination of probable cause. The injury to Jones, Simon, and Hyde did not abate because a certain number of hours passed without their having received a probable cause determination. Rather, the injury intensified the longer they stayed in jail without that determination. An injunction could have stopped that ever-growing harm.

One other aspect of the County's argument needs to be addressed. Under the County's theory, once the magic moment for a Gerstein hearing has passed, the County could keep the arrestees in jail without any hearings for as long as it wanted; the only remedy available to the arrestees would be to seek damages, and federal courts would be powerless to provide equitable relief. Nothing in the law stands for this proposition. Under this theory, a wide array of plaintiffs would not have justiciable cases. See, e.g., Nebraska Press Assocation v. Stewart,, 427 U.S. 539 (1976) (press gag order that expired as jury was impaneled is justiciable).

In the final analysis, this case does not present difficult issues of standing or justiciability. The case is the type

of controversy as to which this Court has on many occasions considered the merits. The holding of the Court of Appeals on the standing issue should be affirmed or the writ should be dismissed as improvidentially granted.

II.

THE COURTS BELOW PROPERLY CONCLUDED THAT THE COUNTY FAILED TO PROVIDE A PROMPT PROBABLE CAUSE DETERMINATION

One of the fundamental truths about warrantless arrests is that a certain percentage of individuals are arrested incorrectly. These persons deserve to go free as quickly as possible. "[T]he practice of arbitrary imprisonments, have been, in all ages, the favorite and most formidable instruments of tyranny." The Federalist Papers, No. 84, 511-12 (Hamilton) (New American Library 1961). Confining an individual for an undue

length of time, however brief the time seems, challenges seminal constitutional liberties. An expeditious probable cause determination provides a key protection for the wrongly accused.

Consequently, in Gerstein v. Pugh, 420 U.S. 103 (1975), this Court held that the Constitution requires that a person arrested without a warrant may not be incarcerated for an undue length of time without being afforded a probable cause determination. The Court noted that incarceration may have serious consequences, more serious than even the interference occasioned by the arrest.[9]

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[9] Pretrial confinement may imperil the suspect's job, interrupt his source of income, and impair his family relationships. [Citation.] Even pretrial release may be accompanied by burdensome conditions (continued...)

These consequences are all the more devastating where the person is detained without probable cause. As this Court explained, it follows that, under the Constitution, the period of detention without a probable cause determination should be "brief," sufficient only to permit the authorities to take the necessary administrative steps incident to arrest. Id. at 113-14.

This case presents a straightforward application of these principles. The County has admitted that it can provide

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[9](...continued)
> that effect a significant restraint of liberty. [Citation.] When the takes are this high, the detached judgment of a neutral magistrate is essential if the Fourth Amendment is to furnish meaningful protection from unfounded interference with liberty.

Gerstein, 420 U.S. at 113.

probable cause determinations more quickly than it does. J.A. 304. As the County's own brief makes plain, of 70 people, 23 people were held for 1 day, 23 for 2 days, 16 for 3 days, and 8 held presumably for longer. BP 46-47, n.14. As the County also admits, some percentage of those who are given a probable cause hearing are released.[10] It is palpably unjust for any individual to stay in jail for any extra time when there was no reason to arrest that individual in the first place.

Based on these principles, the district court found that, absent exigent circumstances, the County could complete all of the administrative steps incident to arrest within thirty-six hours after

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[10] The County gives the figure of six percent. BP 48, n. 15. In the record, the testimony of Chief Deputy Larry D. Smith indicates that in Orange County the percentage may be higher. J.A. at 161-162.

arrest. Since there is no evidence in the record with which the County can attack the district court's factual finding as clearly erroneous,[11] the County must instead admit its delay in providing probable cause determinations and try to find a justification for it. The County therefore argues that it conducts all probable cause determinations at arraignment; that California law has mandated that these determinations occur at arraignment; and that by ordering otherwise, the federal courts have interfered with California's right to administer its criminal justice system. BP 36-50. These arguments are beside the point, because this case is not about what

[11] Federal Rule of Civil Procedure 52(a); see Anderson v. City of Bessemer City, N.C, 470 U.S. 564 (1985).

California may or may not do, but about what Riverside County did.[12]

The County's major premise -- that adherence to California law automatically complies with Gerstein and precludes federal scrutiny -- fails because the County never established that it did comply with California law. The record

[12] It is true that Gerstein recognized that in some states it may be desirable to afford a probable cause determination at another formal pretrial procedure, and that some state procedures would need no adjustment. 420 U.S. at 122. Others would require only minor adjustments, such as "acceleration" of existing preliminary hearings. Id. But far from saying that the probable cause determination must await existing procedures, Gerstein held that existing procedures must, to a certain extent, accommodate the right of a pretrial detainee to a probable cause determination. If existing state procedures coincide with the administrative steps necessary to process arrest, then the state proceedings are adequate. If not, then existing procedures should be accelerated (Gerstein's "minor adjustments"), or else the probable cause determination should proceed independently.

does not demonstrate that the County always provides probable cause determinations at arraignment within five days after arrest. As noted above, the County treats individuals arrested for misdemeanors differently from those arrested for felonies. While the County may provide misdemeanor arrestees with the opportunity, upon their request, for a probable cause hearing at the time of arraignment, JA 126-127, the County informs felony arrestees that they can -- again at their request -- receive a probable cause determination "within a reasonable time." JA 128-129. No time period is specified, but testimony from the Riverside District Attorney suggests that probable cause determinations take place at the preliminary hearing, as much as ten court days after arraignment. See

J.A. 298-98 (deposition of Riverside County District Attorney Grover Trask). As a matter of law, this procedure could not comply with Gerstein.[13]

In short, the case poses no problems of federalism; a district judge narrowly crafted an injunction that implements federal constitutional law while respecting the needs of the County. See Missouri v. Jenkins, 495 U.S. ____, 109 L.Ed.2d 31 (1990).[14] If the County asks

[13] Contrary to the County's contention, California has never squarely decided when probable cause determinations in felony cases should take place. In Re Walters, 15 Cal. 3d 738, 126 Cal. Rptr. 239, 543 P.2d 607 (1975) (by its terms applying only to misdemeanors); Cal. Penal Code Section 991 (applying only to misdemeanors).

[14] Moreover, the record contains no evidence that Riverside will, as the County argues (see BP 46-50), suffer any disruption. The County of Riverside, through its District Attorney Grover C. Trask II, admitted that it could comply

(continued...)

the Court to use this case as a vehicle for announcing the relationship between state criminal pretrial procedures and

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[14](...continued)
with an order imposing a procedure like that used in Orange County, California (in which a probable cause determination must be made within thirty-six hours after arrest). J.A. 303-305. The record contains no evidence as to why the County would need additional time. Nothing in the record for example, shows that the district court's injunction would result in any additional costs or added delays in other administrative mechanisms. Although not in the record, the Amicus Curiae Brief, of the County's District Attorney supplies the only clue as to why the County wants to delay the probable cause determinations: a County's desire to obtain more evidence against the arrestee. This Court expressly noted in Gerstein, however, that the State cannot legitimately keep an accused in prolonged custody simply to develop a stronger case against him. Gerstein, 420 U.S. at 121, n. 21, citing Mallory v. United States, 354 U.S. 449, 456 (1957).

Gerstein, that request is inappropriate.[15]

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[15] Further, if the Court believes that it cannot affirm, record problems make that plenary review of the merits inappropriate. While the record indicates that Riverside County informs misdemeanor defendants of a right to a probable cause hearing, at their request, the record does not state how many requests are made. The record contains little information about the exact periods of incarceration before a probable cause determination for those arrested without a warrant. While the record suggests that the majority of detained arrestees are charged with felonies [J.A. at 299], the record does not indicate what percentage of the pretrial detainees in the Riverside County jail are arrested for felonies and what percentage are held on misdemeanor charges or whether those percentages have changed over time.

CONCLUSION

For the foregoing reasons, Amicus requests that the Court affirm the judgment of the United States Court of Appeals for the Ninth Circuit.

DATED: December 19, 1990

Respectfully submitted,

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